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September 6, 1991

The Honorable Dan Morales
Attorney General of Texas
P.O. Box 12548
Austin, TX 78711

Dear General Morales:

RE: Request for Opinion

This agency is hereby requesting an official opinion to clarify the application of a provision in recent legislation as it applies to The Texas Engineering Practice Act, Article 3271a, VTCS.

1 House Bill 11, August 13, 1991, as passed by the First Called Session, 72nd Texas Legislature, provides in Section 10.08(a) that the referenced Article 3271a is amended by adding Sec. 13B which increases three specific fees. The amendment reads as follows:

Sec. 13B. INCREASE IN FEES. (a) Each of the following fees imposed by or under another section of this Act is increased by \$200:

- (1) registration fee;
- (2) annual renewal fee; and
- (3) reciprocal registration fee.

(b) Of each fee increase collected, \$50 shall be deposited to the credit of the foundation school fund and \$150 shall be deposited to the credit of the general revenue fund. This subsection applies to the disposition of each fee increased regardless of any other provision of law providing for a different disposition of funds.

(c) Subsection (a) does not apply to a registered professional engineer who meets the qualifications for an exemption from registration under Section 20(g) or (h) of this Act but who does not claim that exemption.

Briefly, Sec. 20(g) of the Act is an exemption for regular employees of a private corporation who perform engineering services exclusively for that corporation, and not for the public. Sec. 20(h) of the Act is a similar exemption for the employees of a privately-owned public utility or cooperative utility who perform engineering services exclusively for that utility and not for the public. Each exemption implicitly provides that engineering services which might be performed on the property of others or for the general public are not exempted from the responsible supervision of a registered engineer.

Thus, the exemption from the \$200 annual renewal fee applies to those registered engineers who are employed by either of the two aforementioned entities, and could have been exempt from being registered in the first place but chose to

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Our quandary involves the literal construction of Sec. 138(c) wherein it states that the three categories of increased fees do "not apply to a registered professional engineer who meets the qualifications for an exemption from registration under Section 20(g) or (h)...." The very first "(1)" category of fees is the registration fee, but category (1) does not apply to a registered engineer. "Registered professional engineers" do not apply for registration annually - they renew their registration annually as in category (2). By its preamble, therefore, the Sec. 138(c) exemption appears to apply only to registered engineers. Who, then, can avail themselves of the exemption in category (1)?

Our question is, if the Board receives an application for registration from a non-registered employee of one of the organizations described in Sec. 20(g) or (h), who is qualified for an exemption from State registration but chooses to seek professional registration, is the individual eligible to apply for registration without paying the \$200 increased registration fee?

Your early attention to this request will be appreciated.

Very truly yours,



Charles E. Nemir, P.E.
Executive Director

CEN:smg

cc: Members of the Board